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March 16th, 2020

Regulations Division,
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451 7th Street SW, Room 10276,
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RE-Docket: FR-6123-P-02 Affirmatively Furthering Fair Housing

To whom this may concern,

On behalf of the members of the National Association for County Community and Economic Development (NACCED), we respectfully submit the below recommendations and suggestions to the Department of Housing and Urban Development (HUD) in regard to the Affirmatively Furthering Fair Housing (AFFH) proposed rule.

The National Association for County Community and Economic Development (NACCED) was established as an affiliate of the National Association of Counties (NACo) in 1978 to develop the technical capacity of county government practitioners that administer federally-funded affordable housing, community development, and economic development programs benefiting low- and moderate-income households.

The Fair Housing Act of 1968 requires the federal government, states, and local communities to work to undo systematic discrimination and segregation practices the government and the private sector created. Although this legal obligation is enshrined in the Fair Housing law, no meaningful guidance existed until the Affirmatively Furthering Fair Housing rule was published in 2015. The 2015 AFFH rule made the strongest effort in decades to reverse harmful patterns of segregation and discriminatory practices in communities across the country. The rule equipped local communities with the tools and guidance they needed to meet their obligations under the Fair Housing Act, giving jurisdictions the flexibility to identify their unique fair housing challenges and develop priorities and methods for addressing them in a way that fit their circumstances.

NACCED appreciates HUD's commitment to alleviate some of the unintended burdens caused by the 2015 rule and we support HUD's focus on local control and regulation of fair housing. However, NACCED also supports the continued implementation of the 2015 AFFH Rule, which creates a fair housing planning framework that emphasizes meaningful community participation, requires HUD review, and provides data and maps to better inform fair housing analysis. Moreover, if HUD does decide to continue modifying the AFFH rule, we request you take into consideration our recommendations and suggestions prior to implementing a final AFFH rule.

Specifically, NACCED offers recommendations on the following aspects of the proposed AFFH rule:

Summary & Definition of Affirmatively Furthering Fair Housing:

The current regulation defines AFFH as “taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” The proposed rule would change the definition of AFFH to “advancing fair housing choice within the program participant’s control or influence.”

NACCED believes the revised definition fails to address that the availability of housing choices does not preclude discrimination. Furthermore, we believe housing justice and racial justice are inextricably linked.

In HUD’s attempt to create a less burdensome definition, the intended purpose of the AFFH in explicitly addressing discriminatory practices is lost. HUD can “emphasize a jurisdiction can AFFH in a variety of ways, according to the needs and means of the local community” while maintaining the previous AFFH rule’s language around discrimination and protected classes. Specifically, we urge HUD to keep “transforming racially and ethnically concentrated areas of poverty into areas of opportunity” in the AFFH definition as a continued effort to eliminate any discrimination or segregation, intended or otherwise.

AFFH Certification:

NACCED appreciates HUD’s approach in allowing local jurisdictions to choose which inherent fair housing barriers to address and we agree that HUD’s requirements should be tailored by type of grantee; as states, local governments, tribal entities, and local public housing authorities have different capacities, resources, issues, and geographic scope. However, the proposed “Jurisdictional Risk Analysis” does not go far enough to stop existing patterns of segregation and discrimination. It fails to account for the important role of private fair housing enforcement, as the analysis only considers findings of civil rights violations in cases brought by HUD or the U.S. Department of Justice. Furthermore, the “inherent barriers” to fair housing choice included in the AFFH certification only explicitly mention one protected class – persons with disabilities -- but make no further attempt to directly connect disparities in access to housing opportunities with longstanding patterns of segregation and discrimination against other protected classes, or to more fully explore housing barriers faced by persons with disabilities. Out of the 16 pre-approved barriers, only three of them address fair housing. The vast majority of barriers focus on the supply of housing rather than fair housing.

We recommend HUD use the 2015 rule’s data-driven approach to assessing fair housing by defining AFFH as a means to address disparities, integrate communities, eliminate concentrated areas of poverty, and encourage compliance with civil rights and fair housing laws. If the appropriate fair housing obligations are not defined in the rule, we believe it will remove an essential guardrail of fair housing and further perpetuate housing segregation across the country.

While adding to the supply of affordable housing is crucial, without appropriate investments and protections, it will not necessarily result in affordable housing for low- to moderate-income families or reduce discriminatory practices towards protected classes. NACCED believes AFFH planning and actions should focus on facilitating the goals of the Fair Housing Act, including eliminating discrimination, removing barriers to housing faced by protected classes, and promoting fair housing choice. Further, NACCED believes grantees’ AFFH planning efforts should be based on the best data available about the fair housing needs and obstacles in their communities. In some instances, that might be publicly available national data, which HUD provides, while other grantees may have direct access to more timely research and data specific to their geographies. Having appropriate and accurate data would allow jurisdictions to examine the severe shortage of affordable housing and would help jurisdictions to identify and address barriers to affordable housing.

Public Participation

The proposed rule would eliminate the separate AFFH public participation process, suggesting that the public participation already required in the Consolidated Plan process is sufficient for addressing AFFH-related concerns and issues. However, the Consolidated Plan’s public participation process is designed to obtain input regarding housing and community development needs and assess which needs among the many have the highest priority in the five-year

Consolidated Plan cycle. Identifying and assessing fair housing issues, priorities, and goals entail different concepts and may require different stakeholders.

The separate community participation process ensures that people who are most impacted by the fair housing consequences of housing and community development decisions have a voice in the planning process. Several of NACCED's county members are already circulating surveys to their community members in an attempt to further public participation in their Fair Housing consolidated plans. However, we acknowledge that the capacity and scope varies per jurisdiction and we maintain that jurisdictions should have the flexibility to include the level of public participation that is appropriate for their locality and consolidated plan.

NACCED appreciates the opportunity to provide feedback and recommendations on HUD's proposed Affirmatively Furthering Fair Housing rule and looks forward to continuing to work with HUD to ensure grantees effectively and appropriately further fair housing. If you have any questions regarding these comments, please do not hesitate reaching out to me at ldemaria@naced.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura DeMaria', written in a cursive style.

Laura DeMaria
Executive Director
National Association for County Community and Economic Development